

Terms of Reference: Review of Security of Payment Laws

Background

The lack of consistent security of payment across jurisdictions has been identified by various reviews and inquiries as an ongoing issue in the building and construction industry.

The Senate Economic References Committee on insolvency in the Australian construction industry heard evidence, that while well-intentioned, the often vastly different security of payment laws operating in each jurisdiction are not working as well as intended and there are barriers to access. The Committee also found that it is a fundamental right of anyone that performs work in accordance with a contract to be paid without delay for the work they have done.

The Review

The Review will:

- examine security of payment legislation of all jurisdictions to identify areas of best practice for the construction industry
- take into account any reviews and inquiries that have recently been conducted in relation to security of payment, including the December 2015 report by the Senate Economic References Committee on insolvency in the Australian construction industry and the draft legislation developed by the 2003 Cole Royal Commission into the Building and Construction Industry
- consult with business, governments, unions and interested parties and the Security of Payments Working Group
- consider how to prevent various types of contractual clauses that restrict contractors in the construction industry from obtaining payments for work that has been completed

In making recommendations, the Review should consider other models including the model that operated in the Queensland jurisdiction prior to 2014.

The Review is to provide a progress report to the Minister for Employment by 30 September 2017 with the final report, which includes recommendations, provided to the Minister no later than 31 December 2017.